No. 4307

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

J. AL. PATTISON,
Plaintiff in Error

vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Brief of Defendant in Error

Upon Writ of Error to the District Court of the United States for the District of Oregon.

JOHN S. COKE,
United States Attorney for the District of Oregon.

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POINTS AND AUTHORITIES.

I.

The common law rule that in felonies the principal must be tried and convicted before his accessory, does not now obtain in trials in the federal courts, since there exists a general statute making accessories principals in fact and punishable as such.

United States vs. Hillegass, 176 444-447,
See Paragraph 2.
Sections 332 and 335, Federal Penal Code.
Rooney vs. United States, 204 Fed. 928.

II.

One jointly indicted with an officer of a federal reserve bank, or member bank, and charged with aiding and abetting such officer in the commission of an offense denounced by Section 9772, United States Compiled Statutes (5209 R. S.) by his plea of guilty admits every material allegation of the indictment and may be punished accordingly, notwithstanding the subsequent trial and acquittal of such officer.

United States vs. Rooney, supra.
United States vs. Hillegass, supra.

ARGUMENT

The statement of facts as set out in the brief of Plaintiff in Error is substantially correct. We therefore turn immediately to discussion of what we conceive to be the law of the question.

In this appeal, Plaintiff in Error relies upon the case of United States vs. Pyle, and cites no other authority to uphold his contention. It seems superfluous to say that the Pyle case is easily distinguishable from the case at bar, and that it affords no guide to a solution of the question now before the Court. In the Pyle case all that the Court decided, and all that the Court could decide was that Connor, the accessory, and Pyle, the principal, having been jointly tried and the verdict of the jury having found Connor guilty and Pyle not guilty, there existed such patent inconsistency that the verdict as to Connor could not be allowed to stand.

It is clear, upon a reading of Section 9772, U. S. Compiled Statutes (5209 R. S.) that, before an aider and abettor may be found guilty and punished for an offense thereunder, the guilt of his principal must be established, either by the verdict of a jury or by a plea of guilty on the part of the aider and abettor, which plea would, of course, amount to the same

thing. However, it is well established and beyond controversy that, by virtue of the provisions of Sec. 332 of the Federal Penal Code of 1910, any person who aids, abets, counsels, commands, induces or procures the commission of any offense defined in any law of the United States becomes, in fact, a principal and is punishable as such. We think it is also beyond controversy that such aider and abettor my be tried separately from the principal offender and that if he be found guilty, the verdict will stand, notwithstanding that his principal may be found not guilty. (Sec. 332 and 335 Federal Penal Code, U. S. vs. Hillegass, 176 Fed. 444, page 2.)

In this case, Plaintiff in Error entered a plea of guilty to the charges set out in the indictment. That plea was an admission of every material allegation in the complaint. It was an admission by Pattison, not only of the truth of the wrongful acts charged against him, but of those charged against his principal, Mann, as well. If we are right in our belief that Pattison in this case could have been tried before his co-defendant, Mann, then, of course, there could be no question that the Court had jurisdiction to entertain his plea of guilty prior to the trial of the defendant, Mann. If the Court had jurisdiction

to entertain such plea of guilty, then the Court had the authority to impose the punishment incident thereto. The fact that Jerome S. Mann was thereafter acquitted by a jury cannot, we submit, affect the question of the guilt or innocence of Pattison; and, in this connection, we quote the following from the case of Goins vs. State, 46 Idaho St. 457; 21 N. E. 476, cited, with approval, by this Court in the case of Rooney vs. United States, 204 Fed. Rep. 928:

> "The circumstance that the principal offender, through failure of proof or caprice of the jury, had been convicted of a lower grade or even acquitted before the aider or abettor was put on trial cannot affect the question of the guilt or innocence of the latter. The degree of the guilt of the aider and abettor, as well as the question whether he is guilty at all, is to be determined solely by the evidence in the case."

Furthermore, it will be observed that, following the trial and acquittal of Mann, the Plaintiff in Error did not request the Court for leave to withdraw his plea of guilty, but, on the contrary, appeared at the time fixed for passing sentence and

heard the Court pronounce judgment upon him, thus, as it were, doubly confirming the truth of the charges contained in the indictment. No one could possibly know better than Pattison himself the truth or falsity of the facts set out in the indictment. As aptly suggested by the Trial Judge in disposing of this question in the Court below, there may have been many reasons why Mann was acquitted. It may have been due to the failure of the Government to prove any material allegation of the indictment, as, for instance, venue. Or, as stated by the Court in the case of Goins vs. State (supra), his acquittal may have been due to a misconception of duty on the part of the jury.

While it is conceded that the facts in the Rooney case differ substantially from those in the case at bar, yet the principles there considered appear to be very much in point, and we are quite willing to submit the question here for determination on the principles of law applicable thereto, as we find them annunciated in that case and the authorities cited therein, and as further illuminated by the well considered decision of District Judge Holland in the Hillegass case.

Respectfully submitted,

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